

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08CV401-03-MU

DERRICK LAMONT SMITH,)
)
Plaintiff,)
)
v.)
)
BRAIN WETZEL,)
)
Defendants.)
)

ORDER

THIS MATTER is before this Court upon a Complaint pursuant to 42 U.S.C. §1983.

Defendants have filed a Motion for Summary Judgment with a supporting brief. It appears that the Defendants may be entitled to summary judgment as a matter of law.

The Plaintiff is advised that under the provisions of Rule 56(e) of the Federal Rules of Civil Procedure, he is required to submit documents, affidavits, or unsworn declarations made under penalty of perjury, in opposition to the Motion for Summary Judgment and supporting documents filed by the Defendant. Rule 56(e) reads in pertinent part as follows:

When a motion for summary judgment is properly made and supported [by affidavits], an opposing party may not rely merely on allegations or denials in its own pleading, rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

This rule requires that if the Plaintiff has any evidence to offer to counter the evidence contained in the Motion for Summary Judgment and supporting documents filed by the Defendant, he must present it to the Court in the form of documents, affidavits, or unsworn

declarations under penalty of perjury. An affidavit is a written statement made under oath; that is, a statement prepared in writing by the Plaintiff and sworn before a Notary Public. Plaintiff may not allege new facts surrounding the events in question as part of your reply. Plaintiff should base his reply and argument(s) solely on the matters set forth in the original Complaint and/or those set forth in the Defendant's Motion. If the Plaintiff chooses, he may instead submit an unsworn declaration and state the following with the date and his signature:

"I declare under penalty of perjury that the foregoing is true and correct."

PLAINTIFF SMITH READ THIS:

The Plaintiff is further hereby advised that he has thirty (30) days from the filing of this Order in which to file documents, affidavits, or unsworn declarations in opposition to the Defendant's Motion for Summary Judgment. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO SUMMARY JUDGMENT.**

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff has thirty(30) days from the filing of this Order in which to provide his own documents, affidavits, or declarations countering the evidence offered by the Defendant's Motion for Summary Judgment.

SO ORDERED.

Signed: March 13, 2009



Graham C. Mullen
United States District Judge

